Appl. No. 10/828,846
Amdt. dated July 27, 2007
Reply to Office Action of February 7, 2007

PATENT

REMARKS/ARGUMENTS

Status of the Claims

Claims 1-31 were pending. No claims have been amended. Therefore, upon entry of this amendment, which is respectfully requested, claims 1-31 will remain pending.

Double Patenting Rejection

Claims 1-17 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 7, 8 and 17 of co-pending Application No. 09/691,405. Applicants will reassess this provisional double patenting rejection when the claims are in condition for allowance but for the provisional double patenting rejection. If necessary or desired, Applicants will consider filing a terminal disclaimer at that time.

35 USC §103 Rejections

Claims 1-5 and 11-31 were rejected under 35 U.S.C. 103(a) as being obvious by Zimmerman *et al.*, Electrophoresis, 1995, Vol. 16, p. 941-947 (hereinafter "Zimmerman"), in view of Thompson *et al.*, Lupus, 1993, 2, p. 15-19 (hereinafter "Thompson") and Kim *et al.*, IEEE Transactions on Pattern Analysis and Machine Intelligence, 1986, p. 761-765 (hereinafter "Kim"), and further supported by Anderson *et al.*, WO/1999/039298; Filed 03/02/1999 (hereinafter "Anderson"). Claims 6-10 and 22-24 were rejected under 35 U.S.C. 103(a) as being obvious by Thompson in view of Kim and Diamond *et al.* as applied to claims 1-5 and 11-14, above, and further in view of Kopecky, Design and Implementation of the Internet-Based Medical Expert System ToxoNet, 1999, p. 1-153. Applicants respectfully traverse there rejections.

Applicants respectfully assert that the cited references, either individually or in combination, fail to teach or suggest limitations of the claims. For example, the cited references fail to teach or suggest the limitation of "storing a plurality of reference data sets in a memory, ... wherein said reference data sets include **at least one reference data set associated with**

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none of the specific SADs" as recited in independent claim 1, and also the limitation of "a

memory module that stores a plurality of reference data sets,.... wherein said reference data sets

include **at least one reference data set associated with none of the specific SADs**" as recited

in independent claim 18. (emphasis added) Zimmerman, for example, reports on a study in

which all patients have a disease of the study. For example, in the sentences on the right-hand

column on page 941, it is stated that:

> "Skeletal muscle samples were obtained at diagnostic biopsies in
> patients presenting with clinically suspected muscular disorders. ... Samples from
> patients with muscular dystrophy or polymyositis were used."

None of the individuals studied in Zimmerman was disease free. Also, Figures 3A, 3B and 3C as

referenced by the Examiner do not equate to a teaching for values that are associated with neither

disease as posited by the Examiner, especially not for stored reference data sets. Figure 3

illustrates histogram formation representing results of tests, not reference data sets for use in a

comparison with a patient sample. That is, Zimmerman fails to teach or suggest reference data

sets for disease-free patients.

Similarly, in Thompson, all tests are carried out on individuals/patients who did

have SLE; no tests were carried out on patients known to not have SLE, *i.e.*, known to be

disease-free. This is clear with reference to Table I and the sentences spanning columns 15 and

16: "Data on 117 Caucasian patients with SLE were included in this study. Of these, 19 had a

clinical diagnosis of incomplete lupus as previously defined; the remaining 96 had SLE fulfilling

the American Rheumatism Association's revised criteria for the classification of the disease and

two had drug induced lupus (Table I)." For profile D in the study, it is stated at page 17 that

"[n]one of the patients with SLE included in this study had profile D...." Thus, all patients in the

study of Thompson had a form of SLE; none of the patients was disease-free. Kim and

Anderson and the other cited references also fail to remedy the deficiencies of Zimmerman and

Thompson in this regard. In particular, these references also fail to teach or suggest, *inter alia*,

the limitation of "storing a plurality of reference data sets in a memory, ... wherein said

reference data sets include **at least one reference data set associated with none of the specific

SADs**" as recited in independent claim 1, and also the limitation of "a memory module that

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stores a plurality of reference data sets,.... wherein said reference data sets include **at least one reference data set associated with none of the specific SADs**" as recited in independent claim 18.

Accordingly, Applicants respectfully request withdrawal of the rejections to independent claims 1 and 18 for at least the above reasons. Applicants also respectfully request withdrawal of the rejections to all claims depending from claims 1 and 18, based at least on their dependency from claim 1.

It should be further noted that Applicants do not believe that one skilled in the art would be motivated to combine all the disparate references presented in the above rejections. Also, Applicants believe that such combinations would not result in the claimed invention, or that such combinations would render the claimed invention obvious. Nonetheless, Applicants will withhold further argument and comment at this time as Applicants believe the pending claims are allowable based at least on the above reasons.
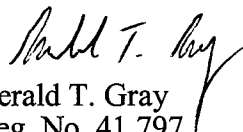
CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

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If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 925-472-5000.

Respectfully submitted,

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Attachments
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